

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Edward Butowsky,

Plaintiff,

v.

Case No. 4:19-cv-00180-ALM-kpj

Michael Gottlieb, et al.,

Defendants

HEARING REQUEST

NOW COMES Edward Butowsky, the Plaintiff, requesting that the Court schedule his Corrected Motion to Compel Federal Bureau of Investigation to Comply with Subpoena Duces Tecum (hereinafter “Corrected Motion”) (Doc. No. 179) and his Supplemental Motion to Compel Federal Bureau of Investigation to Comply with Subpoena Duces Tecum (hereinafter “Supplemental Motion”) for the hearing to be held on June 10, 2020 at 9:30 a.m. in the Plano courthouse. The Defendants do not oppose this motion, but the government does. In a May 26, 2020 email, Asst. U.S. Attorney Robert Wells wrote as follows:

The government opposes having the motion to compel being heard on June 10, 2020.

According to the docket, there are several motions to dismiss being heard that day. The motion to compel has no bearing on the outcome of those motions to dismiss. Those motions to dismiss concern issues with Mr. Butowsky’s complaint, like jurisdiction and whether Mr. Butowsky has stated a viable claim. Those motions do not concern discovery-type issues like those raised by your motion to compel.

If you file a motion requesting the Court to set the motion to compel for hearing

that day, the government will respond and request that the motion to compel only be heard after the Court has ruled on the pending motions to dismiss. After all, dismissal of the suit would make the motion to compel moot.

May 26, 2020 Email from Robert Wells to Ty Clevenger (Exhibit 1). The Plaintiff would note, however, that this Court's rules reflect a strong bias in favor of proceeding with discovery, even while dispositive motions are pending:

No Excuses. Absent a court order to the contrary, a party is not excused from responding to discovery because there are pending motions to dismiss, to remand, or to change venue. Parties asserting the defense of qualified immunity may submit a motion to limit discovery to those materials necessary to decide the issue of qualified immunity.

Local Rule CV-26(a). The Plaintiff was actively engaged in third-party discovery up until the Court's March 4, 2020 Order (Doc. No. 204) staying proceedings, and the Corrected Motion was filed more than six months ago. Unless the Court expects to dismiss every claim against every Defendant, there is no need to delay this matter any longer. The information sought by the Plaintiff could resolve one of the core issues in this case and several others pending before this Court (as well as other courts), and it is a matter of national interest. Finally, hearings are difficult to schedule under any circumstances, and Plaintiff's Counsel resides in New York, where travel has been complicated by the COVID-19 pandemic. It would be much easier for an attorney from the local U.S. Attorney's Office to attend the June 10, 2020 hearing than it would be for Plaintiff's Counsel to fly back to Texas for a separate hearing. For all of the foregoing reasons, the Plaintiff requests that the Court hear the Corrected Motion and Supplemental Motion on June 10, 2020.

Respectfully submitted,

/s/ Ty Clevenger

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CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for all of the Defendants via email on May 24, 2020 regarding the foregoing request for hearing. Counsel for the CNN Defendants, New York Times Defendants, and Vox Defendants indicated that their clients do not oppose this request. Counsel for the Boies Schiller Defendants did not respond, but the case has been stayed with respect to their clients. Counsel for the U.S. Government indicated that his client would oppose this request. *See* Exhibit 1.

/s/ Ty Clevenger

Ty Clevenger

CERTIFICATE OF SERVICE

I certify that a copy of this document was filed electronically with the Court's ECF system on May 26, 2020, which should result in automatic notification to all counsel of record.

/s/ Ty Clevenger

Ty Clevenger